IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4961 of 2002

Date of Decision: 11.09.2006

Sant Ram Bhatia ...Petitioner

Vs.

State Bank of Patiala & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Manu Devgan, Advocate,
for the petitioner.

Vinod K.Sharma, J.

This revision petition has been filed against the order dated 19.8.2002 passed by the learned Civil Judge (Senior Division), Faridabad vide which the application filed by the respondents State Bank of Patiala seeking amendment of the written statement has been allowed.

It was the case of the respondents herein that in the written statement originally filed they could not mention the details of the rent tendered and paid to M/s Bhatia Brothers Hardware Store which became the landlord of the premises in question by virtue of decree dated 9.9.1996 passed by the Civil Court in pursuance to the compromise arrived at

between the petitioner and the said firm. In view of the said decree which was passed on the basis of compromise dated 4.9.1996 the respondent herein granted permission to insert the details of the rent tendered to M/s Bhatia Brothers Hardware Store. A copy of the compromise was placed on record as Ex.D.1 which was part and parcel of the decree passed by the civil court.

The application was contested on the ground that the same was barred by limitation and was filed with the sole object to delay the proceedings. It was also pleaded that there was no question of rent having paid to M/s Bhatia Brothers Hardware Store w.e.f. 1.8.1996 as the respondent had deposited T.D.S. with the Income Tax Department in the name of the petitioner up to 29.3.1997. The learned Trial Court came to the conclusion that though the application for amendment was filed at the fag end of the trial but it came to the conclusion that in spite of due diligence the respondent could not have raised the matter before that stage for want of technicalities. The learned Trial Court further observed that the details were furnished by the respondents to the counsel for it. However, he did not think it appropriate to mention the said details. The Court further held that the party should not be allowed to suffer for the fault of negligence of the counsel. The Court held that as the proposed amendment was not going to change the nature of the defence wad was merely meant to elaborate the defence already taken, hence allowed the application.

Mr.Manu Devgan, learned counsel appearing for the petitioner vehemently argued that the order passed by the learned Trial Court cannot be sustained in view of the proviso to order 6 Rule 17 of the Code of Civil Procedure (for short the Code), wherein it has been provided that no

amendment could be allowed after the commencement of the trial unless the court came to the conclusion that in spite of due diligence it was not possible for the party to plead the said matter before the commencement of the trial.

Though in the present case the learned trial Court has given a positive finding that the matter was within the knowledge of the respondent at the time of filing of original written statement still the same was allowed by treating it to be negligence on the part of the counsel. Though this reasoning cannot be sustained in view of the amendment of proviso added to Order 6 Rule 17 of the Code still the order passed by the learned Trial Court does not call for any interference because the first part of Order 6 Rule 17 of the Code provided that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. The bare reading of the amendment shows that the amendment sought, in fact, fell under first part of Order 6 Rule 17 of the Code and it was mandatory on the part of the Trial Court to have allowed such amendment as the amendment sought was necessary for proper and just adjudication of the case between the parties. It is not in dispute that the amendment sought was based on the decree of Civil Court which was passed in pursuance to the compromise entered into between the parties. The learned Trial Court rightly did not go into the merit of the controversy as it would be open to the parties to dispute the claim of the respective parties on merit after the amendment has been allowed. Therefore, no fault can be found with the exercise of jurisdiction of the

learned Trial Court in allowing the amendment

Consequently, I find no merit in the present revision which is accordingly dismissed.

(Vinod K.Sharma)
September 11,2006 Judge
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